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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9  
10                  JACOB BARR, on his own behalf and on  
11                  behalf of other similarly situated persons,

12                  Plaintiff,

13                  v.

14                  PAYZID LLC, California company doing  
15                  business as SALESESCALATOR.COM, and  
16                  DOCIRCLE, INC., a California corporation  
17                  doing business as TRUMPIA.COM,

18                  Defendants.

19                  NO.  
20                  NOTICE OF REMOVAL

21                  PLEASE TAKE NOTICE THAT Defendants Payzid LLC, d/b/a SalesEscalator.com  
22                  and DoCircle, d/b/a Trumpia.com (collectively, "Defendants") hereby give notice of the  
23                  removal of the above-entitled civil action from the Superior Court of the State of Washington  
24                  in and for the County of King (Case No. 12-2-26562-3 SEA) to the United States District Court  
25                  for the Western District of Washington, at Seattle. As more fully set out below, this case is  
properly removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1446 because Defendants  
have satisfied the procedural requirements for removal and this Court has subject matter  
jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1332.

NOTICE OF REMOVAL - 1

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601 Union Street, Suite 4100  
Seattle, Washington 98101-2380  
(206) 628-6600

## JURISDICTION

#### A. Federal Question Jurisdiction

This action is a civil action as to which the federal courts have original jurisdiction under 28 U.S.C. §1331, and which may be removed by Defendants to U.S. Federal Court under the provisions of 28 U.S.C. §1441(b), because it includes claims arising under the laws of the United States. Removal is therefore proper pursuant to 28 U.S.C. §1446.

Plaintiff's Complaint alleges that Defendants' actions were in violation of 47 U.S.C. § 227. This cause of action does not allege that Defendants' actions were independently unlawful under Washington law. Plaintiff's remaining cause of action is a claim over which this Court may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. §1337(a), because it forms part of the same case or controversy as the claims over which the U.S. Federal Court has original jurisdiction.

### **B. Diversity Jurisdiction**

This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a), as diversity of citizenship exists and Plaintiff is seeking damages in excess of \$75,000, exclusive of interest and costs. This action thus is removable pursuant to 28 U.S.C. §§ 1441 and 1446.

### **1. Diversity of Citizenship Exists**

As alleged in Plaintiff's Complaint, Plaintiff is a Washington citizen. *Id.*, ¶ 2. Also as alleged in Plaintiff's Complaint, Defendants are California corporations with their principal places of business in California. *Id.*, ¶ 6-7. Pursuant to 28 U.S.C. § 1332(c)(1), Defendants are not citizens of the State of Washington. Because Plaintiff is a citizen of the State of Washington and Defendants are not citizens of Washington, complete diversity of citizenship exists.

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## 2. The Amount-In-Controversy Requirement Is Satisfied

Plaintiff's Complaint specifies that he seeks damages of \$500 for each of the approximately 2300 members of the putative class. As such, Plaintiff seeks damages in excess of \$75,000, exclusive of interest and costs ( $\$500 \times 2300 = \$1,150,000$ )

## **SUMMARY OF ALLEGATIONS**

Plaintiff filed a lawsuit against Defendants for damages arising from the alleged transmission by The Pizza Source of unsolicited text messages to Plaintiff and other allegedly similarly situated Washington residents. Complaint, ¶ 12. Plaintiff alleges that Defendants “are responsible for causing and otherwise assisting in the transmission” of the alleged unsolicited text messages, *id.*, ¶ 8, and are therefore liable for violation of the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, and the Washington Consumer Protection Act, RCW 19.86.010.

Defendants generally deny the allegations made by Plaintiff, dispute the claims asserted by Plaintiff, and disputes that Plaintiff is entitled to any relief from Defendants. Defendants discuss the allegations and claims made by Plaintiff solely to demonstrate the propriety of removal.

## **INTRADISTRICT VENUE**

Venue is proper in this Court under 28 U.S.C. § 1441(a) and because this District encompasses King County, the place where the removed action was filed and pending.

## **REMOVAL IS OTHERWISE PROCEDURALLY PROPER**

Removal is Timely: Plaintiff's Complaint was filed on August 8, 2012 and Defendants were served, respectively, on August 12 and 13, 2012. *See* Exhibit A to the Declaration of Michael I. White. Thus, this Notice is being filed within thirty days of service.

Copies of Pleadings: In compliance with 28 U.S.C. § 1446(a), a “copy of all process, pleadings, and orders served upon” Defendants prior to the filing of this Notice are attached as

## NOTICE OF REMOVAL - 3

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1 Exhibit B to the Declaration of Michael I. White. Defendants have been served with no  
2 process, pleadings, and orders other than the Summons, Complaint, and Subpoena for  
3 Documents to The Pizza Source.

4 Notice to Plaintiff and State Court: Defendants will serve written notice of the filing of  
5 this Notice upon Plaintiff as required by 28 U.S.C. § 1446(d) and will file a Notice of Removal  
6 with the Clerk of the Superior Court of the State of Washington in and for the County of King.

7 DATED this 28th day of August, 2012.

8 s/Michael I. White  
9 Michael I. White, WSBA #35409  
10 Attorneys for Defendants Payzid LLC and  
11 DoCircle, Inc.  
12 WILLIAMS, KASTNER & GIBBS PLLC  
13 601 Union Street, Suite 4100  
14 Seattle, WA 98101-2380  
15 Telephone: (206) 628-6600  
16 Fax: (206) 628-6611  
17 Email: mwhite@williamskastner.com

18 NOTICE OF REMOVAL - 4

19 Williams, Kastner & Gibbs PLLC  
20 601 Union Street, Suite 4100  
21 Seattle, Washington 98101-2380  
22 (206) 628-6600

1                   **CERTIFICATE OF SERVICE**

2                   The undersigned, under penalty of perjury under the laws of the State of Washington,  
3 hereby certifies that on the date below, I caused the foregoing document to be electronically  
4 filed with the Clerk of the Court using the CM/EFC system which will send notification of  
5 such filing to the following:

6                   **Attorneys for Plaintiff:**

7                   Donald W. Heyrich ([dheyrich@hkm.com](mailto:dheyrich@hkm.com))

8                   Daniel Kalish ([dkalish@hkm.com](mailto:dkalish@hkm.com))

9                   Heyrich Kalish McGuigan PLLC

10                  1325 Fourth Avenue, Suite 540

11                  Seattle, WA 98101

12                  DATED this 28th day of August, 2012, at Seattle, Washington.

13                  \_\_\_\_\_  
14                  s/Michael I. White

15                  Michael I. White, WSBA #35409

16                  WILLIAMS, KASTNER & GIBBS PLLC

17                  Email: [mwhite@williamskastner.com](mailto:mwhite@williamskastner.com)

18                  NOTICE OF REMOVAL - 5

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